

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2004-267-E - ORDER NO. 2005-51
FEBRUARY 3, 2005

IN RE: Columbia Energy, LLC,)	ORDER
)	GRANTING
Complainant,)	STAY
)	
vs.)	
)	
South Carolina Electric &)	
Gas Company,)	
)	
Defendant.)	
)	

This matter comes before the Public Service Commission of South Carolina on the Motion of South Carolina Electric & Gas Company (SCE&G) for a Stay of this proceeding during the pendency of an appeal before the South Carolina Court of Appeals of a Circuit Court matter that addresses similar issues to those pending before this Commission. Because of the reasoning stated below, we grant the Stay.

As noted in the Motion, a dispute presently exists between SCE&G and Columbia Energy, LLC (Columbia Energy) as to whether a Settlement Agreement entered into between the parties on December 19, 2000, relating to Docket No. 2000-487-E is enforceable.

On June 25, 2004, SCE&G commenced an action in the Calhoun County Circuit Court seeking an Order declaring that the Settlement Agreement is enforceable and enjoining Columbia Energy from breaching the Settlement Agreement. SCE&G

subsequently amended its complaint in that action to include a request for affirmative relief and allege claims for breach of contract and promissory estoppel.

Columbia Energy commenced the instant proceeding before the Commission on September 10, 2004, seeking a declaratory order that the Settlement Agreement is not enforceable.

By Order filed October 19, 2004, the Circuit Court imposed a stay in the Calhoun County Circuit Court action. While retaining jurisdiction over the case, the Circuit Court “referred” two issues to the Commission: (1) a determination as to whether the Commission has jurisdiction over the Settlement Agreement; and (2) if so, a determination as to whether the Settlement Agreement is enforceable.

On October 20, 2004, SCE&G filed a motion in the instant proceeding to dismiss Columbia Energy’s petition for a declaratory order on the ground that the Commission lacks jurisdiction over the Settlement Agreement. In this motion, SCE&G raised many of the same arguments that it had raised before the Circuit Court in the related lawsuit. Columbia Energy filed a memorandum in opposition to the motion. SCE&G also filed a reply responding to this memo.

On November 17, 2004, SCE&G appealed the Circuit Court’s order to the South Carolina Court of Appeals, and that appeal is currently pending. Therefore, there are two concurrent actions pending, one before the Court of Appeals and one before this Commission. Both of these actions involve the potentially dispositive issue of the Commission’s jurisdiction over the Settlement Agreement. SCE&G states that a Stay of

the Commission proceeding is appropriate to permit the Court of Appeals to address the pending questions.

With regard to matter emanating from the Circuit Court, South Carolina Appellate Court Rule 225 requires an automatic stay of an Order and any action required by it, which goes into effect upon appeal, unless the matter comes under certain exceptions as outlined by the Rule. In its response to the Motion for Stay, Columbia Energy has cited no such exceptions that apply in this case. Accordingly, the Circuit Court Order is clearly stayed, until a ruling is issued by the Court of Appeals. The question then becomes whether or not the Commission proceeding ought to be likewise stayed. We hold that it should be.

Although *Rush v. Thompson*, 203 S.C.106, 26 S.E.2d 411 (1943) involved an action at law and a suit in equity regarding the same subject matter, we believe the holding in that case is instructive in this one. The case states: “Where the same parties and the same subject matter are involved in both an action at law and a suit in equity, the pendency of one may authorize a stay of proceedings in the other, the facts and circumstances in each particular case determining in large measure whether the stay should or should not be granted.” 26 S.E. 2d at 413. Under the present circumstances, the Court of Appeals will address questions pending before the Circuit Court and, possibly, this Commission. Accordingly, we hold that, since the Circuit Court Order is stayed subject to a Court of Appeals ruling, the Stay of the Commission action should be granted until such time as the Court of Appeals rules on the appeal of the Circuit Court order.

Clearly, the Court of Appeals ruling could be dispositive of issues in the case before the Commission.

FINDINGS AND CONCLUSIONS

1. SCE&G has moved for a Stay of the Commission proceeding involving contractual matters.

2. An action concerning similar subject matter in the Circuit Court has been stayed, pending disposition of an appeal to the South Carolina Court of Appeals.

3. The Commission's action should be stayed, pending disposition of the Circuit Court matter by the South Carolina Court of Appeals.

IT IS THEREFORE ORDERED this proceeding is stayed until disposition of the Circuit Court matter before the Court of Appeals. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
G. O'Neal Hamilton, Vice-Chairman

(SEAL)